

## Environmental Protection Agency

## § 164.131

(3) Within 10 days of the conclusion of the presentation of evidence the Presiding Officer shall submit to the Environmental Appeals Board his recommended findings and conclusions, together with the record.

(4) Within 12 days of the conclusion of the presentation of evidence the parties shall submit to the Environmental Appeals Board their objections to the Presiding Officer's recommended findings and conclusions and written briefs in support thereof.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5344, Feb. 13, 1992]

### § 164.122 Final order and order of suspension.

(a) *Final order.* Within 7 days of receipt of the record and of the Presiding Officer's recommended findings and conclusions, the Environmental Appeals Board shall issue a final decision and order. Such final order may accept or reject in whole or in part the recommendations of the Presiding Officer.

(b) *Order of suspension.* No final order of suspension shall be issued unless the Environmental Appeals Board has issued or at the same time issues a notice of its intention to cancel the registration or change the classification of the pesticide. Such notice shall be given as provided in § 164.8.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5344, Feb. 13, 1992]

### § 164.123 Emergency order.

(a) Whenever the Environmental Appeals Board determines that an emergency exists that does not permit him to hold a hearing before suspension, the Environmental Appeals Board may issue a suspension order in advance of notification to the registrant.

(b) The Environmental Appeals Board shall immediately notify the registrant of the suspension order. The registrant may then request a hearing in accordance with §§ 164.121 and 164.122, but the suspension order shall remain in effect during the hearing pending the issuance of a final order on suspension.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5344, Feb. 13, 1992]

## Subpart D—Rules of Practice for Applications Under Sections 3 and 18 To Modify Previous Cancellation or Suspension Orders

AUTHORITY: Sec. 25(a) and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 997).

SOURCE: 40 FR 12265, Mar. 18, 1975, unless otherwise noted.

### § 164.130 General.

EPA has determined that any application under section 3 or section 18 of the Act to allow use of a pesticide at a site and on a pest for which registration has been finally cancelled or suspended by the Administrator constitutes a petition for reconsideration of such order. Because of the extensive notice and hearing opportunities mandated by FIFRA and the Administrative Procedures Act before a final cancellation or suspension order may be issued, EPA has determined that such orders may not be reversed or modified without affording interested parties—who may in fact have participated in lengthy cancellation proceedings—similar notice and hearing opportunities. The procedures set forth in this subpart D shall govern all such applications.

### § 164.131 Review by Administrator.

(a) The Administrator will review applications subject to this subpart D and supporting data submitted by the applicant to determine whether reconsideration of the Administrator's prior cancellation or suspension order is warranted. The Administrator shall determine that such reconsideration is warranted when he finds that: (1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.